

**OFODILE & ASSOCIATES, P.C.**

**498 Atlantic Avenue  
Brooklyn, NY 11217  
Tel. No.: (718) 852-8300  
Fax No.: (718) 852-7361**

July 1, 2009

VIA ECF

The Honorable Andrew L. Carter  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Joseph Fierro v. The City of New York, et al.*  
08-CV-1837 (CPS)(ALC)

Dear Judge Carter:

We represent Plaintiff Joseph Fierro in the above-referenced action. I am filing an Amended Motion for an extension in the discovery deadline. I was not in the office yesterday and I e-mailed a letter motion to my supervisor, Mr. Ofodile and asked him to file it on ECF. He had trouble opening the e-mail attachment and instead he filed a draft that I had sent him on Monday, which he thought was the same as the letter attached to my e-mail but was in fact different and also incomplete. I apologize for any inconvenience this Amended Motion causes the Court.

This case has somewhat of a companion case in the Southern District of New York – 07-CV-11214 – over which The Honorable Shira A. Scheindlin is presiding. The instant case was filed after the companion case, but heretofore, the Court in the instant case has been following the discovery schedule set by Judge Scheindlin in the SDNY case because the parties intended to conduct discovery in the two cases together. We respectfully request the Court to now depart from the discovery schedule set in the SDNY case. The deadline for fact discovery set in both the SDNY case and the EDNY case was June 30, 2009. Last week, Plaintiff made a motion in the SDNY case, with the Defendants' consent, requesting an extension in fact discovery to October 30, 2009 (with concomitant extensions in expert discovery). *See* copy of letter motion with Court's Order hand-written on it, annexed hereto as Exhibit 1. The Court denied Plaintiff's application but did hold that the parties could decide how to use their time between now and the deadline for expert discovery, which is August 27, 2009. *See* electronic version of Court's Order, annexed hereto as Exhibit 2.

Ofodile & Associates, P.C.

The Honorable Andrew L. Carter

July 1, 2009

Page Two

In essence, the Court held that the parties could continue fact discovery past June 30, 2009 and up to the expert discovery deadline of August 27, 2009. Plaintiff respectfully requests the Court to depart from the SDNY's Order and grant an extension to September 30, 2009 to complete discovery in the EDNY case – the instant case. Defense Counsel, Assistant Corporation Counsel Jamie Zinaman, Esq. consents to our request.

The EDNY case should be treated differently from the SDNY case because it was filed about six months after the SDNY case, the initial conference in the instant case took place almost eight months after the initial conference in the SDNY case, and as a result, written discovery in the instant case began several months after written discovery in the SDNY case. In addition, there are eight individual Defendants in the EDNY case compared to four individual Defendants in the SDNY case and only two overlap between the two cases – Defendants Bonnie Brown and Dr. Susan Erber. None of the non-parties that Plaintiff needs to depose in the EDNY case overlap with any in the SDNY case. In fact, the only similarities between the two cases are that Plaintiff, Defendant Bonnie Brown, and Defendant Dr. Susan Erber are parties in both cases and some of the damages that Plaintiff suffered were similar in both cases. There are really no other bases for conducting discovery together as the two cases involve distinct claims and are based on incidents that occurred in two different time periods, in two different schools, and involve largely dissimilar people.

We would greatly appreciate an extension in discovery to September 30, 2009 in the instant case and thank the Court for its time and attention to this application.

Respectfully submitted by: /s/ /b/ Kathy A. Polias

Kathy A. Polias, Esq. (KP-9025)

Ofodile & Associates, P.C.

498 Atlantic Avenue

Brooklyn, NY 11217

Tel. No.: (718) 852-8300

cc: VIA ECF AND FACSIMILE

Jamie M. Zinaman, Esq.

Assistant Corporation Counsel

The City of New York Law Department

100 Church Street

New York, New York 10007

Fax No.: (212) 788-8877